



# How do journalists gain access to public records in the 21<sup>st</sup> century?

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## Thesis

Adapting the executive meeting and the retention schedule definition in Florida's Sunshine Law to accommodate the persistent use of electronic conversations regarding matters of public concern would reduce open meeting violations while promoting government integrity.

## Findings

- Post hoc remedial exception was established in *Tolar v. School Board of Liberty County* and allows members of a government agency who violated the Sunshine Law to fix the controversy by holding a public meeting. The fact-finding exception permits a government official and their staff members to meet in private if the meeting is fact-finding not decision-making. Both exceptions have caused issues because officials rely so heavily to these exceptions
- Recently, officials around Florida have violated Florida's executive meeting regulations by using text messages on privately owned phones to discuss decision-making matters that are of public concern. Government sanctioned phones for officials are being considered to avoid these complications.
- Nowhere in the Florida Statute are electronic recordkeeping systems mentioned that can accommodate for text messaging. Officials have the ability to delete decision-making text messages without direct access for public records.
- Retention schedules have been established to deal with the proper disposal of electronic records. An agency must establish a program to dispose of records that don't have sufficient legal, fiscal or administrative value in accordance with retention schedules.

## Thesis

Recent court decisions have looked at how colleges and universities have cited FERPA correctly, or incorrectly, in matters regarding student-athletes and coaches that do not involve core educational and disciplinary records. These decisions allow journalists to be more forceful in making public records requests as institutions of higher learning are, more times than not, incorrectly enacting FERPA as a reason for withholding records when the documents are in fact open.

## Findings

- Courts have sided with education agencies in cases dealing with student records, citing that any records maintained by an education agency that directly relate to a student are private.
- A growing trend among college athletic departments restricts the release of any records containing any names of student-athletes as in the case when Ohio State redacted documents regarding travel expenditures for athletics to the Columbus Dispatch on the basis that a student-athlete's name might be mentioned.
- The Family Education Right to Privacy Act is filled with ambiguous language that allows education agencies to cite the federal act, FERPA, as a legal reason to withhold records while simultaneously violate the law. The saying is if it makes the agency look good then there's no problem releasing the record. If it makes them look bad, then the record is protected by FERPA.